

REMARKS

The Applicant thanks Supervisory Patent Examiner Deborah Jones and Examiner Abraham Bahta for their courtesy in conducting the Interview on September 3, 2003. The proposed claim discussed during the Interview is submitted in this Amendment as new claim 21, claims 2-6 and 14 have been amended, and claims 1, 11-13, and 18-20 have been canceled. Upon entry of the above amendments, claims 2-10, 14-17, and 21 will remain in the application.

The Examiner rejected claims 1-5 under 35 U.S.C. § 102(b) as being anticipated by Yedlin et al. U.S. Patent No. 6,042,903. As discussed during the Interview, new claim 21 is not anticipated by the Yedlin reference. In particular, claim 21 recites, *inter alia*, "a spine having a vertical axis" and "wherein the vertical planes of the major surfaces of the elongate strips in the series intersect at the single vertical axis." Because the spines of the device disclosed by the Yedlin et al. '903 patent do not include these features, claim 21 is patentable over this reference.

The Examiner also has rejected claims 6-13 under 35 U.S.C. § 103(a) as unpatentable over the Yedlin '903 patent. However, claims 6-13, as amended, are not obvious in view of the Yedlin reference. Specifically, amended claim 6 recites "each strip connected at one end to a first vertical spine and at the opposite end to a second vertical spine, each strip in a different vertical plane." It is respectfully submitted, that the claimed device having vertical spines and having strips located in vertical planes and connected at the ends to the spine is not obvious in view of the Yedlin reference.

Claims 14-17 have been rejected under 35 U.S.C. § 102(b) as being anticipated by Yedlin et al. For at least the reasons generally set forth above with respect to new claim 21, it is respectfully submitted that claims 14-17, as amended, are patentable over the Yedlin et al. patent.

During the Interview, the Applicant and Examiners discussed Benham U.S. Patent No. 4,746,022. In contrast to the present invention, Benham discloses concentric rings 28-30 each in a plane that is perpendicular to central post 11. Accordingly, new claim 21, as well as Applicant's amended claims, are neither anticipated by nor obvious in view of the Benham reference.

Concurrently submitted herewith is an Information Disclosure Statement and PTO Form 1449 identifying Applicant's design patent D472,183 issued March 25, 2003. Applicant filed the present utility application on January 18, 2002, and on March 4, 2002, filed the application which matured into design patent D472,183. Applicant respectfully submits that he should not be penalized because the design application progressed through the U.S. PTO more quickly than the utility application. *In re Braat*, 19 U.S.P.Q.2d 1289, 1292 (Fed. Cir. 1991). Further, Applicant believes that the claims sought in the pending utility application are "patentably distinct" from the claim in the earlier design patent. *In re Dembiczak*, 50 U.S.P.Q.2d 1614, 1619 (Fed. Cir. 1999). Assuming an obviousness-type double patenting rejection, "the test is whether the subject matter of the *claims* of the patent sought to be invalidated would have been obvious from the subject matter of the *claims* of the other patent, *and vice versa*." *In re Dembiczak supra* at 1619 (emphasis added). This is known as the "two-way" test. Applicant respectfully contends that the claim of Applicant's design patent is not obvious in view of the pending utility claims. Specifically, for a design claim to be unpatentable, "there must first be a basic design reference in the prior art, the design characteristics of which are basically the same as in the claimed design." *In re Dembiczak supra* at 1619. However, the text of Applicant's pending utility claims do not render obvious the specific designs claimed in Applicant's design patent. Thus, Applicant's pending utility claims are not "a basic design reference" which render obvious the issued design claim—it is a rare case for there to be obviousness-type double patenting between a design patent and a utility patent. *In re Dembiczak supra* at 1619.

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Finally, support for the new claim and amendments can be found throughout the drawings and the specification. For example, the specification, at page 4, lines 3-6, discloses that each strip is angularly displaced from an adjacent strip and "is located in a different vertical plane, all of which approximately intersect at a vertical line coincident with the longitudinal direction of spines 14 and 16."

CONCLUSION

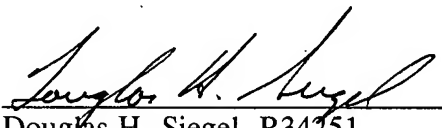
In view of the above amendments and remarks, it is respectfully submitted that the application is in condition for allowance and notice of the same is earnestly solicited.

Respectfully submitted,

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By: PRICE, HENEVELD, COOPER,
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